

U.S. PTO Customer No. 25280

Case# 5374

REMARKS35 USC Section 112 Rejection:

Claim 1 was rejected under 35 USC Section 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner submits that claim 1 is rendered indefinite because it is unclear whether the "formulation" pertains to the "at least one humic acid removal redistribution compound" as disclosed in the Specification at page 7, lines 5-7, or the "formulation" pertains to the combination of sand and the "at least one humic acid removal redistribution compound" as is implied by the "at least a portion of said sand formulation is treated with humic acid" language of the Claim.

Applicants have amended claim 1 to clarify that the "formulation" pertains to the combination of sand and at least one humic acid removal redistribution compound. Thus, Applicants respectfully submit that this rejection has been overcome.

35 USC Section 103(a) Rejection:

Claim 1 was rejected under 35 USC Section 103(a) as being unpatentable over Phillips et al. (US Patent No. 3,379,014).

The Examiner submits that Phillips et al. disclose a synthetic hydrophobic sand formulation (col. 2, lines 19-29 and col. 5, lines 56-73) wherein at least a portion of said sand formulation is treated with humic acid (col. 5 lines 56-73). Not disclosed is the formulation exhibiting a penetration period of at least 9 seconds for a drop of 2 molar ethanol under a

U.S. PTO Customer No. 25280

Case# 5374

minimal ethanol drop test. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the formulation of Phillips et al. by having the formulation exhibit a penetration period of at least 9 second for a drop of 2 molar ethanol under a minimal ethanol drop test so as to stop loss of water through seepage in the banks of canals (see Phillips et al. at col. 2, lines 17-20).

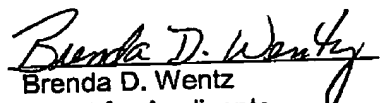
Applicants respectfully submit that this rejection fails to establish a *prima facie* showing of obviousness, since the reference fails to disclose expressly claimed elements or limitations of Applicants' invention. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Applicants respectfully submit that Phillips et al. do not teach or suggest a synthetic hydrophobic sand formulation comprising *the combination* of sand and at least one humic acid removal redistribution compound, as currently claimed by Applicants.

Therefore, since the reference fails to disclose expressly claimed elements or limitations of Applicants' invention, Applicants respectfully submit that a *prima facie* showing of obviousness has not been established. As such, Applicants respectfully submit that this rejection is improper and request that the rejection of claim 1 be withdrawn.

In view of the above amendments and remarks, reconsideration of pending claim 1 is earnestly solicited.

April 23, 2004

Respectfully requested,


Brenda D. Wentz
Agent for Applicants
Registration Number: 48,643
(864) 503-1597